

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 10-3463 JB

EDDIE CHACO, JR.,

Defendant.

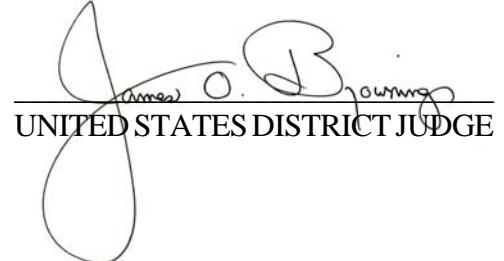
MEMORANDUM OPINION AND ORDER

THIS MATTER comes before Court on Defendant's Second Motion in Limine, filed July 31, 2011 (Doc. 54). The Court held a hearing on August 3, 2011. The primary issue is whether the Court should prohibit Plaintiff United States of America from eliciting testimony about statements Jane Doe made from any witness other than Dr. Ornelas and Doe, in particular: (i) an October 19, 2007 statement to Federal Bureau of Investigation ("FBI") Agent John Pierson; (ii) a May 2010 disclosure Doe made to Defendant Eddie Chaco, Jr.'s sister, Anne Chaco; (iii) a June 2010 disclosure Doe made to a family friend, Angelica Rael; (iv) a June 30, 2010, "safe house" interview with Doe; and (iv) various statements subsequently given to FBI Agent Marcus McCaskill. The United States, "[w]ith respect to these specific statements, . . . agrees with [Chaco] and will not offer them during the government's case-in-chief."¹ United States' Response to Defendant's Second

¹ The United States' concession is subject to three caveats: (i) the United States contends that it can use any of these statements to impeach Doe during the course of her testimony or to refresh her recollection, see Fed. R. Evid. 607, 612; (ii) any of these statements, particularly Doe's May 2010 statement to Anne Chaco, is potentially admissible as a prior consistent statement should Chaco argue or suggest that Doe's testimony has been recently fabricated or has been subject to improper influence or motive, see Fed. R. Evid. 801(d)(1)(B); and (iii) the United States' concession does not encompass the statements Doe offered to Dr. Renee Ornelas in November 2010, which it maintains are admissible under rule 803(4). The Court may not allow refreshing of memory in the

Motion in Limine Filed on July 31, 2011 (Doc. 54), filed July 31, 2011 (Doc. 55). Accordingly, the Court grants the motion.

IT IS ORDERED that the Defendant's Second Motion in Limine, filed July 31, 2011 (Doc. 54), is granted.



James O. B.ourne
UNITED STATES DISTRICT JUDGE

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presence of the jury. In any case, the United States should approach the bench before attempting to use any of this evidence for these purposes.